

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2043 of 1985

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUKHDEOKUMARSING S/O KHUSHAL SING SR.NO.268

Versus

OIL AND NATURAL GAS COMMISSION

Appearance:

MR ARUN H MEHTA for Petitioners

MR RAJNI H MEHTA for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/09/96

ORAL JUDGEMENT

The petitioners are employees of the respondent no. 1 commission (hereinafter referred to as the Commission), who were promoted as Technical Assistant Grade-II (Production) during the year 1982 and 1983. The petitioners nos. 1 and 3 earned further promotions as Assistant Engineer (Production) with effect from 1st April, 1982 and as Assistant Executive Engineer (Production) with effect from 1.1.1985. The petitioners nos. 2, 4, 5 and 6 have earned further promotion to the

post of Assistant Engineer (Production) with effect from 1.1.1986 and to the post of Assistant Executive Engineer (Production) with effect from 1.1.1993. The petitioners in this petition have claimed that the respondents nos. 2 and 3 were junior to the petitioners in the cadre of Production Operator and were given further promotion to the post of Technical Assistant Grade -II (Production) on 17.3.80 and 26.5.1979 respectively in supersession of the petitioners prior claim for such promotion. The petitioners have, therefore, claimed that petitioners be given deemed promotion to the post of Technical Assistant Grade-II (Production) with effect from the date on which the respondents nos. 2 and 3 were so promoted.

2. The claim of the petitioners have been contested by the respondent-Commission by filing counter affidavit made by its Deputy Director (P & A). It has been stated that the seniority of the Production Operator and Technical Assistants Grade-II are maintained regionwise and the chances of further promotion to the post of Technical Assistant Grade-II (production) shall depend upon the vacancies available in each region. It is submitted that the persons serving under one region cannot claim promotion to a post in the other region. It is the claim of the respondent commission that the respondent no. 2 was serving in Western Region as Production Operator. However, pursuant to his request, he was transferred to the Central Region at Daheradoon in the year 1976. Such transfer was made on condition that the said respondent no. 2 shall not claim seniority for the period served under the Western Region. It is submitted that the respondent no. 2 was under graduate, and according to the Recruitment and Promotion Regulations of the Commission, an undergraduate is required to possess six years experience as Production Operator for becoming eligible for further promotion to the post of Technical Assistant Grade-II (Production). Many posts of Technical Assistant Grade-II (Production) came up for filled-in in the month of February, 1980 though the respondent no. 2 had not completed the required six years service, his case was considered and he was given the benefits of relaxation in period of experience and was promoted on the functional vacancy in the Central Region. Learned advocate Mr. RH Mehta appearing for the Commission has submitted that since the cadre of Technical Assistant Grade-II (Production) is decentralized cadre, the petitioners, who were serving in the Western Region cannot have any claim for promotion to the post falling vacant in the Central Region. Learned advocate Mr. AH Mehta appearing for the petitioners has claimed that the respondent no. 2 originally was serving

in the Western Region and was transferred to the Central Region at his request. Mr. Mehta has submitted that the respondent no. 2 was transferred to the Central Region probably because there were better chances of promotion in the Central Region and it was, therefore, imperative for the Commission to first enquire of the petitioners, who were undisputedly senior to the respondent no. 2, whether they would opt for such transfer. I am afraid, I cannot accept this contention. The respondent no. 2 was transferred in the year 1976 and none of the petitioners had ever objected to the transfer of respondent no. 2. Neither of the petitioners has ever claimed for transfer out of the Western Region. Mr AH Mehta has been unable to dispute the claim of the Commission that the post of Technical Assistant Grade-II (Production) is decentralized cadre. Under the circumstances, the petitioners' claim for deemed promotion from the date the respondent no. 2 was so promoted in the Central Region requires to be rejected.

3. Mr AH Mehta has relied upon the schedule attached to the Regulations for Recruitment and Promotion in the Commission. Appointment to the posts of Technical Assistant Grade-II (Production) can be made either by promotion or by direct recruitment. Promotion can be made from amongst the Production Operators or Technicians Grade-II (Production). The schedule further provides for a minimum experience to be possessed by such candidates. The experience i.e. prescribed is that of three years for the candidates possessing Diploma in Petroleum/Mining/Mechanical/Chemical Engineering; that of four years for graduates in Science and of six years for under graduates. Mr. Mehta has submitted that respondent no. 3 possessed a Diploma in Machine Tools Technology. Thus, he could not have been considered qualified for further promotion as a Diploma Holder. The respondent no. 2, therefore, could have been treated as an under graduate and he could not have been promoted until he completed six years services as a Production Operator. He has further submitted that Diploma possessed by the respondent no. 3 was wrongly considered equivalent to the Diploma in Petroleum/Mining/Mechanical/Chemical Engineering and the respondent no. 3 was given the benefits available to a Diploma holder i.e. he was promoted on completion of three years' experience. The promotion granted to the respondent no. 3 was clearly erroneous and the petitioners ought to have been promoted before the respondent no. 3 was promoted. However, since the Commission failed to promote the petitioners before the respondent no. 3, the petitioners have preferred this

petition and have claimed deemed promotion with effect from the date when the respondent no. 3 was promoted.

4. Learned advocate Mr. RH Mehta has produced a comparative statement showing the relevant dates of appointments and promotions of the petitioners and the respondents nos. 2 and 3. On perusal of the said comparative statement, it appears that the respondent no. 3 was promoted as Production Operator on 20.2.1973 while petitioners nos. 2 to 6 were so promoted after 20.2.1973. Thus, claim of the petitioners nos. 2 to 6 for the deemed promotion with effect from the date of promotion of the respondent no. 3 requires to be rejected outright. The petitioner no. 1 alone was senior to the respondent no. 3 in the cadre of Production Operator. Mr. RH Mehta has submitted that the Technical Examination Board of the State of Gujarat under its letter dated 13.6.1983 has equated the qualification possessed by the respondent no. 3 with that of the Diploma in Petroleum/Mining/Mechanical/Chemical Engineering. Mr. AH Mehta has, however, disputed that the subsequent equation made by the Technical Examination Board shall not validate the promotion given to the respondent no. 3 in the year 1979. He has further submitted that irrespective of the equation made by the Technical Examination Board unless the relevant rules are amended, the respondent no. 3 could not have been considered eligible for the promotion on the basis of the Diploma acquired by him. Be that as it may, it must be noted that the respondent no. 3 was promoted as the Production Operator on 20.2.1973 and he has been promoted as Technical Assistant Grade-II (Production) on 26.5.1979. Thus, he had already completed six years experience as Production Operator. Even if the contention of Mr. AH Mehta is accepted and the respondent no. 3 is considered to be an under graduate he had become eligible for further promotion on 26.5.1979, the date on which he was so promoted. The promotion of the respondent no. 3, therefore, cannot be said to be erroneous as claimed by the petitioners.

5. The question that now remains to be considered is that whether the petitioner no. 1 can be given the relief of deemed promotion as claimed by him. It is undisputed that petitioner no. 1 was promoted as Production Operator on 22.7.1972 and he was promoted as Technical Assistant Grade-II (Production) on 22.9.1982 with effect from 28.1.1982. He was further promoted as Assistant Engineer (Production) with effect from 1.4.1982 and as an Assistant Executive Engineer (Production) with

effect from 1.1.1985. Mr. RH Mehta has submitted that the petitioner no. 1 has retired from the service on reaching the age of superannuation on 31.5.1996. Mr. Mehta has submitted that the dispute raised by the petitioners in the year 1985 i.e. six years after the respondent no. 3 was promoted as Technical Assistant Grade-II (Production) and after he earned two further promotions, is grossly belated and requires to be rejected on the grounds of delay and laches. Mr. Mehta has relied upon the judgment of the Hon'ble Supreme Court in the matter of P.S. Sadasivaswamy v. State of Tamil Nadu, reported in AIR 1974 SC p. 2271. It has been observed by the Supreme Court that "A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle settled matters."

6. Mr AH Mehta has claimed that the petitioners cannot be said to have approached this Court after undue delay. It is claimed that the petitioners became aware of the promotion of the respondent no. 3 in the year 1983 and, thereafter they made a representation to the Commission which was rejected in the month of January, 1985 and petitioners immediately approached this Court thereafter. In the circumstances, the petition should be entertained on merits and the claim of the petitioners should be allowed.

7. The petitioners have approached this court six years after the respondent no. 3 was promoted as Technical Assistant Grade-II (Production) and after the respondent no. 3 earned two further promotions. In the meantime, the petitioner no. 1 also was promoted as Technical Assistant Grade-II (Production) and had also earned further promotion as Assistant Engineer as well as Assistant Executive engineer. It is required to be noted further that petitioners nos. 1 and 3 and the respondent no. 3 have earned their further promotion as Assistant Engineer (Production) on 1.4.1982 and as Assistant

Executive Engineer with effect from 1.1.1985. Thus, even if the petitioner no. 1 has any claim for deemed promotion with effect from 26th May, 1979, in any view of the same has now become academic since he has not suffered loss in the matter of higher promotion as Assistant Engineer of Assistant Executive Engineer. I, therefore, do not consider it expedient to grant any relief to the petitioner no. 1 at this stage.

7. Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.
